

Applicant: Johnson, Bruce
Serial No.: 10/806,796
Filed: 03/23/2004
Title: Personal Fuel Hose Lift
Examiner: Maust, ART UNIT 3751

REMARKS

Applicant traverses the examiner's rejection of claim 1 in view of Metzger. Although Metzger includes some of the elements of Applicants claim 1, it does not include all limitations as required. As noted by the examiner, Metzger includes a handle, a bar and a support that includes a trough. These are general terms and their meaning must be derived from the specification and figures of Metzger and of Applicant. Of significance in this instance is that applicant requires its support, handle and bar to be in a C-shape. Metzger's support hangs swivelly fully below its bar. Clearly, the Metzger structure is not in C shape. Further, applicant requires that its lift include an open portion. Metzger's support is in fact a closed clamp that secures his structure to the hose; it has no open portion. (His claim is "circumferentially engageable with the outer diameter of a segment of a tubular hose." Column 2, Line 33-34) Also Applicant requires that the structure be capable of sliding along the fuel hose. Metzger's figures and naming his element a clamp makes clear that his device is immovably affixed to a hose. It is therefore not capable of sliding on the hose. Further, Metzger states, "The bar hose guides of the invention such as shown in FIGS. 1 and 2 are affixed to the hose" (Column 4, Lines 11-13) and "the clamp means 200 for securing connection around the outer diameter of the hose" (Column 4, Lines 20-21). The examiner states that "the device is capable of supporting a fuel hose in the manner described." If the examiner meant that the Metzger could lift and slide along a fuel hose as Applicant described, then it appears that the examiner has misread Metzger.

For further clarity, Applicant has amended claim 1 to explicitly specify that the reciting "open portion" is opposite the bar which open portion is required to receive a fuel

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hose, as described in the specification. Metzger receives a hose in its clamp below the bar; Metzger does not disclose an element that receives a hose through an opening that opposes the bar.

The examiner indicated that claims 3-7 and 10 would be allowable if rewritten in independent form including limitations of intervening claims.

Claim 3 has been amended to include all the limitations of independent claim 1 from which they depended. Claims 3-6 are therefore in allowable form.

Claim 8 has also been amended to include all the limitations of independent claim 1 from which it depended. The basis for rejection of claim 8 is not clear. Applicant therefore must traverse the examiner's rejection of claim 8 and claim 9 dependent on claim 8. Claim 8 specifies a length of the bar as measured by the user in erect posture using the lift in vertical disposition to lift a fuel hose from the ground. The cited reference Metzger is not used in the manner required by Applicant and therefore does not require or specify a given length suitable to the intended use by Applicant. The length of Applicant's bar is not incidental or a design choice but is in fact required as specified for it to achieve its purpose. As such it is indeed an element at the focus of the invention. Metzger does not recognize the importance of the bar length because his bar length largely is inconsequential in his specified use. Recognition of the importance of bar length by Applicant is therefore inventive and worthy of patent claim protection. Because Applicant believes claim 8 is allowable as written, claim 10, in which the examiner found allowable content if amended to include limitations of intervening claims, was not amended but remains dependent on claim 8, which now as amended includes the limitations of original claim 1.

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The examiner has rejected claim 11 asserting that "the method would be inherent to the system." MPEP 2112.02 states the standard for rejection under inherency, as follows:

"Under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process."

The prior art device in this instance is presumably Metzger, though the examiner did not explicitly say so. Metzger's structure clamps immovably to a hose for the purpose of controlling the hose position distant from the hose, as an extended handle connected to the hose. The normal and usual operation of the Metzger prior device is certainly not to lift a hose and slide or roll it along the hose as the hose is being lifted. In fact, the Metzger is incapable of performing the function described by Applicant. Therefore, the examiner's rejection of claim 11 under inherency is inappropriate. Claim 11 is therefore not amended.

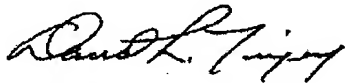
It is believed that the amended and unamended claims are in allowable form. The examiner is requested to reexamine the claims and issue a patent thereon.

No other additional fee is due.

Dated November 22, 2004

For Applicant, Johnson

Respectfully,



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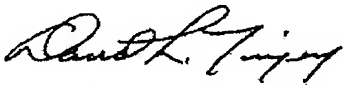
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CERTIFICATE OF FACSIMILE

I hereby certify that this correspondence is being delivered by facsimile to the USPTO at
(703) 872-9306 this day of November 22, 2004



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